IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 170 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARABHAI CHEMICALS PVT. LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 170 of 1989

MR RK PATEL for Petitioner No. 1

MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Mr BB Naik learned counsel for the revenue makes a specific request that since this reference is pending for the last about 12 years and more particularly, since the controversy raised in this reference is concluded by a direct decision of this Court, this Bench may take up this reference for final disposal, notwithstanding the fact that one of us (Mr. D.A. Mehta,J) had appeared for the respondent-assessee at the hearing of the reference application before the Income Tax Appellate Tribunal.

In view of the above request, we take up this reference for final disposal.

2. In this reference at the instance of the assessee, the following question is referred for our opinion in respect of assessment year 1981-82:-

"Whether on the facts and in the circumstances of the case, the Tribunal is justified in upholding the disallowance of interest amounting to Rs.1,63,961/- claimed u/s. 28 of sec.36 (1)(iii) or sec. 37 of the I.T. Act, 1961 ?"

3. We have heard Mr RK Patel learned counsel for the assessee and Mr BB Naik learned counsel for the revenue.

4. Our attention is invited to the decision of this Court in Saraspur Mills Ltd. vs. CIT, 226 ITR 533 holding that interest paid on borrowings for the purpose of income tax payment is not admissible as business expenditure.

5. Following the aforesaid decision, our answer to the question referred to us is in the affirmative i.e. in favour of the revenue and against the assessee.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-